

REMARKS

The Office Action dated August 13, 2004 has been reviewed and carefully considered. Claims 1-11 remain pending, of which the independent claims remain 1, 10 and 11. The “means plus function” language of claim 11 has been simply revised in a manner completely apparent from the first sentence of [0064] of the instant U.S. patent application publication US 2002/0083245. The Examiner’s indication of allowable subject matter for claims 2 and 3 is appreciated. Reconsideration of the above-identified application, as amended and in view of the following remarks, is respectfully requested.

The drawings stand objected to for the lack of labels in boxes. Enclosed is a new set of drawings, FIGs. 1-5, in which the boxes have been labeled to the extent believed to be practicable and appropriate.

Claims 1-11 stand rejected under 35 U.S.C. 112, second paragraph, as indefinite.

Page 2 of the final Office Action suggests that “essential structural cooperative relationship(s) are missing, and cites to MPEP §2172.01. This passage in the MPEP states:

A claim which omits matter disclosed to be essential to the invention as described in the specification or in other statements of record may be rejected under 35 U.S.C. 112, first paragraph, as not enabling. *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). See also MPEP § 2164.08(c). Such essential matter may include missing elements, steps or necessary structural cooperative relationships of elements described by the applicant(s) as necessary to practice the invention. MPEP 2172.01.

Based on a reading of the cited passage, the question arises as to what “missing” “relationships” are “described by the applicant(s) as necessary to practice the

invention.” The purportedly omitted matter must be disclosed to be “essential . . . as described in the specification.”

Referring back to the first (non-final) Office Action of February 11, 2004, the same rejection was in force, but there does not appear to be any description of what the first Office Action deems to be “missing” in the context of the above two sentences.

Our reply to the first Office Action traversed the rejection, citing to authority for the traversal.

Yet, the current (final) Office Action maintains the rejection without providing any guidance whatsoever as to what the final Office Action regards to be “missing” in the context of the above question.

Notably, the above-quoted passage from the MPEP cites, in turn, to §2164.08(c).

A feature which is taught as critical in a specification and is not recited in the claims should result in a rejection of such claim under the enablement provision section of 35 U.S.C. 112. See *In re Mayhew*, 527 F.2d 1229, 1233, 188 USPQ 356, 358 (CCPA 1976). Broad language in the disclosure, including the abstract, omitting an allegedly critical feature, tends to rebut the argument of criticality. *Laros Co.*, 209 F. Supp. 639, 135 USPQ 11 (E.D. Pa. 1962). MPEP 2164.08(c).

Referring to claim 1, a careful reading of the instant specification shows that whatever “relationships” the final Office Action deems to be “missing” in the above-described context are referred to somewhere in the specification in broad terms that dispel any notion that the relationship is critical or essential to the present invention.

Such a suggestion that critical relationships are omitted from the claims, likewise, cannot be sustained for claims 10 or 11.

The “means plus function” language of claim 11 has been simply revised in a manner completely apparent from the first sentence of [0064] of the instant U.S. patent application publication US 2002/0083245.

Sensing, perhaps, the futility of the above suggestions of the first Office Action, page 5 of the final Office Action attempts to uphold the Examiner’s original citation to MPEP 2172.01 by now citing to a different part of that passage. Continuing from the above-cited portion of MPEP 2172.01, the MPEP reads as follows:

In addition, a claim which fails to interrelate essential elements of the invention as defined by applicant(s) in the specification may be rejected under 35 U.S.C. 112, second paragraph, for failure to point out and distinctly claim the invention. See *In re Venezia*, 530 F.2d 956, 189 USPQ 149 (CCPA 1976); *In re Collier*, 397 F.2d 1003, 158 USPQ 266 (CCPA 1968) MPEP 2172.01.

As in the preceding MPEP passage under §2172.01, the term “essential” cannot properly be ignored in interpreting the meaning of the passages. The latter passage refers to “essential . . . as defined by applicant(s) in the specification.”

This latest MPEP passage is followed by guidance on some of the pitfalls to avoid in attempting to reject a claim for failure to recite essential matter. The described pitfalls relate to seeing essentiality or criticality where it does not exist.

From the bottom of page 5 to the top of page 6, the “Response to Arguments” section of the final Office Action asks us to prove that the Examiner has fallen into one or more of the described pitfalls.

The only advice we can provide at this time is to read the instant specification carefully and completely, with regard to what are “essential elements . . . as defined by applicant(s) in the specification.”

A careful reading of the specification dispels any notion that “essential” subject matter has been omitted from the claims.

For at least all of the above reasons, the indefiniteness rejection of claims 1-11 is meritless and cannot be sustained.

Reconsideration and withdrawal of the rejection is respectfully requested.

Claims 1 and 4-11 stand rejected under 35 U.S.C. 102(e) as anticipated by U.S. Patent No. 6,452,935 to Gibbs.

Claim 1 recites, “a status manager including . . . status transmitting means for transmitting status information on the isochronous status channel.” The present applicants fail to see how the Gibbs reference can properly be characterized as disclosing this feature of claim 1 of the present invention.

The Gibbs reference merely mentions that IEEE 1394 provides for a bus that supports both asynchronous and isochronous communication (col. 1, lines 59-64), and that the bus carries both commands and status information (col. 6, lines 47-50). Comparing this Gibbs disclosure to what is disclosed in the present application (e.g., [0009], first two sentences), it is unclear how it properly can be said that Gibbs discloses the above-quoted features of claim 1 of the present invention.

In purported explanation of how the cited reference discloses the above-quoted features, page 3 of the final Office Action fails to cite to the reference and

appears, instead, to be citing to the IEEE 1394 bus protocol. Page 3 of the final Office

Action states:

a status manager having status channel creation means (in compliance with 1394 protocol, all isochronous data are transferred via created channels) for creating on the bus an isochronous status channel and having status transmitting means (in compliance with 1394 protocol, all data including status information must be broadcasted via channels) for transmitting status information (system configuration, available bandwidth, capacity, for example) on the isochronous status channel.

The Office Action seemingly is citing to IEEE 1394 for the proposition that status information is broadcasted via channels.

Firstly, even if we were to regard the latter statement as being correct, the statement does nothing to advance the suggestion by the Office Action that there exists prior art disclosure of “transmitting status information on the isochronous status channel.”

Secondly, IEEE 1394 is not cited as a reference in the instant anticipation rejection. We invited the Examiner, in our previous Office Action reply, to review the IEEE 1394 standard if the Examiner thinks our invention can be found. Our invention cannot be found in the IEEE 1394 standard.

In the “Response to Arguments” section, page 6, the final Office Action suggests that the isochronous resource manager (IRM) of IEEE 1394 constitutes disclosure of claim 1 of the present invention. As support for this proposition, the final Office Action offers nothing more than another equally-unsupported proposition that “The isochronous resource manager monitors, among other things, the status of available bandwidth and notify the nodes of the remaining bandwidth status.”

Even if we were to accept the latter proposition as correct, there does not seem to any support for the proposition that the IRM is a “status manager” that includes, “status channel creation means for creating on the bus an isochronous status channel, and status transmitting means for transmitting status information on the isochronous status channel.”

Firstly, the monitoring of available bandwidth by the IRM constitutes the monitoring of merely a single type of status, whereas many types of status exist and are typically stored on a single device that is accessed by all other devices to know a status (see present patent application publication [0009], first two sentences). Consequently, the proposition offered by the final Office Action fails to suggest that the IRM is a “status manager” which language explicitly appears in claim 1 of the present invention.

Secondly, isochronous is the opposite of asynchronous. Accordingly, the transmitting of status information over an asynchronous channel, i.e., in the conventional manner (see present specification, page 2, lines 20-28), even in the event that the isochronous resource manager does the transmitting of the particular status, cannot fairly be characterized as implying that the isochronous resource manager is “transmitting status information on the isochronous status channel.”

Continuing with the “Response to Arguments” and framed almost as an off-the-cuff suggestion, the Examiner states, “As a matter of fact, the ‘stream manager’ of Gibbs et al. is bandwidth resource manager.” To the applicants’ best understanding, this statement by the Examiner is a repeat of the above propositions by the Examiner, coupled with the suggestion that the applied reference “inherently” furnishes the purported

disclosure of the claims of the present invention. The applicants are unable to find any merit in such a proposition as is being offered by the final Office Action.

For at least all of the foregoing reasons, the cited reference fails to anticipate the present invention as recited in claim 1.

Since both claims 10 and 11 recite the above-quoted feature of claim 1, they too are deemed to be patentable over the cited reference.

Moreover, as the above analysis demonstrates, it would not have been obvious to modify the Gibbs reference to create an embodiment that resembles any claim of the present invention.

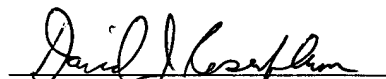
As to the other rejected claims, each depends from base claim 1, and is deemed to be patentable over the cited reference for at least the same reasons set forth above with regard to claim 1. However, since each of the dependent claims addresses an additional aspect of the present invention, each warrants further consideration based upon its own individual merits.

For all the foregoing reasons, it is respectfully submitted that all the present claims are patentable in view of the cited references. A Notice of Allowance is respectfully requested.

Respectfully submitted,

Gregory Thorne
Registration No. 39,398

Date: September 28, 2004

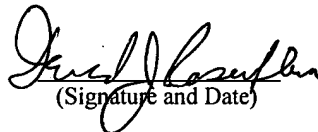

By: ~~David~~ Rosenblum
Attorney for Applicants
Registration No. 37,709

Mail all correspondence to:
Gregory Thorne, Registration No. 39,398
US PHILIPS CORPORATION
P.O. Box 3001
Briarcliff Manor, NY 10510-8001
Phone: (914) 333-9624
Fax: (914) 332-0615

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David Rosenblum 37,709
(Name of Registered Rep.)

 09/28/04
(Signature and Date)

Amendment
Serial No. 09/933,846

Docket No. NL000468

IN THE DRAWINGS:

Enclosed is a new set of drawings, FIGs. 1-5, in which the boxes have been labeled.